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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,751	05/25/2000	Theodore Jack London Shrader	AUS000168US1	6562

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IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS, TX 75380

EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/578,751

Applicant(s)

SHRADER ET AL.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgements

1. Applicants' amendment filed March 16, 2005 is acknowledged. Accordingly, claims 1-14 remain pending.
2. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
3. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

Claim Rejections - 35 USC §112 2nd Paragraph

4. The following is a quotation of the 2nd paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3, 4, and 6 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. Claim 3 recites the limitation "the associated price data" in line 2. It is unclear if "the associated price data" is the same or different from "an associated price value" as recited in claim 1. Applicants are reminded that "semantic indefiniteness of claims is not

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rendered unobjectionable merely because it *could* have been corrected. [Emphasis in original.]” *Allen Engineering Corp. v. Bartell Industries Inc.*, 299 F.3d 1336, 1349, 63 USPQ2d 1769, 1776 (Fed. Cir. 2002) (citations and quotations omitted).

In this case, and by way of example only, the Examiner suggests (in Applicants’ next appropriately filed response) changing in claim 3 “the associated price data” to --the associated price value-- if Applicants’ specification supports such an amendment. To be clear, this solution is only a *suggestion* and is not a requirement mandated by the Examiner. Other solutions clearly exist and like all claim decisions, it is up to Applicants to select the best choice for their claims.

b. The scope of claim 3 is also indefinite. If the price data does not have a given relationship to the given threshold, the scope of the claim is indefinite. The plain language of the claim and because Applicants use “if,” the claim language clearly permits the condition not to be met.

c. Claim 6 is indefinite because the metes and bounds of the claim can not be determined. In particular, it is unclear if the phrase “wherein the profile includes matching criteria that must be met for the item name” in claim 6 is ‘in addition to,’ or ‘in replacement of,’ the phrase “generating a profile” as recited in claim 1. First, the Examiner starts with the presumption that all claim terms are presumed to have meaning in a claim. “While not an absolute rule, all claim terms are presumed to have meaning in a claim.” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1119, 72 USPQ2d 1001, 1007 (Fed. Cir. 2004). Second, the Examiner adapts the presumption that there exists a difference in meaning and scope when different words or phrases are

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used in separate claims. “The doctrine of claim differentiation can shed light on the proper scope to be afforded a claim limitation, for there is presumed to be a difference in meaning and scope when different words or phrases are used in separate claims.” *Toro Co. v. White Consolidated Industries, Inc.*, 199 F.3d 1295, 53 USPQ2d 1065, 1070 (Fed. Cir. 1999) citations and quotations omitted). In this case, Applicant clearly uses “further including” in claims 2 and 3. Because claim 6 does not use “further comprising” or other phraseology in the preamble indicating they desire the subsequent limitations to be ‘additional’ limitations, and because Applicants’ use “further comprising in other claims, claim 6 has the presumption that it does not contain “further” limitations.

Because it does not contain additional or further limitations, it remains unclear if “the profile includes matching criteria that must be met for the item name” in claim 6 is ‘in addition to,’ or ‘in replacement of,’ the phrase “generating a profile” as recited in claim 1. Yet because the presumption has been established that the claim is interpreted to mean ‘in addition to,’ the only remaining interpretation is ‘in replacement of.’

6. The Examiner finds that because the claims are indefinite under 35 U.S.C. §112 2nd paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) (“Because the claims are indefinite, the claims, by definition, cannot be construed.”). However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied *as much as practically possible*.

Claim Rejections - 35 USC §102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-14, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being anticipated by Streetprices.com (website printout of January 25, 1999) (“Streetprices 1/99”). Streetprices 1/99 discloses generating a set of product profiles (see *e.g.* “Computers”, “Flowers” and “Toys”), each identifying a given site URL (inherent); a list of one or more included items to be queried (the product to be searched), a scan interval (inherent in the graphs) and a site template (inherent in HTML and XML; periodically retrieving data from the given site URL (inherent in the x axis of the graph) according to the scan interval; parsing the data retrieved to generate a data record (inherent since it discloses the price over time); storing the data records (inherent); and the product profiles includes one or more triggers (a threshold price which sends an email when a price drops below a particular level).

Claim Rejections - 35 USC §103

9. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all

obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Streetprices 1/99 in view of Bailey et. al. (U.S. 6,785,671)(“Bailey”).¹ It is the Examiner’s principle position that the claims are anticipated because the parsing is inherent and a profile identify a given a site URL is also inherent.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Streetprices 1/99 as taught by Bailey to include Bailey’s parsing. Such a modification would have simply disclosed a feature that is already inherent in Bailey.

Regarding the generating the profile identifying a given site URL, this too is inherent in web crawler program. If web crawler programs does not generate an object, list, or profile identifying a given URL, that particular URL can not be searched.

11. Additionally, if the sever structure was not inherent, it too would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Streetprices 1/99 to include generating at the client computer a profile. It is the Examiner’s position that absent evidence of new or unexpected results, it is not inventive in terms of patentability to take

¹ See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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one or more clients or servers ($S_1, S_2, S_3, \dots S_N$) which perform one or more tasks ($T_1, T_2, T_3, \dots T_N$) and add (or subtract) an additional number of servers (X) to perform all or part of the same tasks by allocating the tasks between the various clients and servers (*i.e.* S_1 and S_{N+1} perform T_1 ; S_2 and S_{N+2} perform T_2 ; S_3 and S_{N+3} perform T_3 ; ... while S_N and S_{N+X} perform T_N). The prior art is replete with examples showing why user various client server configurations are desirable.²

12. In other words, a modification distributing the tasks between various clients and servers (*e.g.* having a client computer perform a task previously performed by one or two servers) is analogous to making functions, structures, or actions separable. It is the Examiner's position that when the difference between the claimed invention and the prior art is that the prior art does not disclosed an element as separable, as a matter of law, it would have been obvious to one having ordinary skill in the art to make the element separable. See MPEP §2144.04 V. C. and *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961). As noted above, it is desirable to allocate the computer tasks to various clients and servers to help reduce bandwidth bottlenecks

² See *e.g.* Watson (U.S. 6,223,209 B1) disclosing distributed satellite world wide web servers containing identical information placed strategically throughout the Internet so as to be close to all potential clients to help reduce traffic bottlenecks; Midgely et. al. (U.S. 5,592,611 A) disclosing additional servers as a stand-in for a failed server so that client service requests are transparent to the user; Kriegsman (U.S. 6,370,580 B2) disclosing multiple servers as secondary web servers to optimize file transfers; Burns et. al. (U.S. 6,298,373 B1) disclosing cache servers which download content during off-peak hours to reduce traffic bottlenecks; Stiles (U.S. 6,219,692 B1) which discloses sending essentially identical tasks to multiple servers with differing processing loads to find the most preferred server provider; Zdepski et. al. (U.S. 5,825,884) disclosing an transactional server for TV networks; Burns et. al. (U.S. 6,298,373) disclosing how computers are used at clients to increase bandwidth by providing content in downloaded from other computers; *How Networks Work*, Chapter 17 describing how sever based structures benefit from economies of scale in addition to offering security, excellent data management, fast response, and room for expansion; and *How the Internet Works*, Chapter 44 implementing a server based architecture in Internet e-commerce.

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and to help increase the benefits from economies of scale in addition to offering increased security, excellent data management, fast response, and room for expansion.

13. After careful review of the entire record, especially the specification, the Examiner finds that Applicants have not asserted in their specification any new or unexpected results regarding their hardware configuration (i.e. using the "client computer). Absent such new or unexpected results, such modifications having either servers or client computers perform tasks or even reassigning tasks to different server(s) or client computers would have helped maintain benefits from economies of scale in addition to offering increased security, excellent data management, fast response, and room for expansion while reducing both operating and capital costs.

14. For due process purposes, the Examiner again confirms that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner again notes the following factual findings as first discussed in the previous Office Actions.³ First, the Examiner has again carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements⁴ with

³ See the First Non Final Office Action mailed July 29, 2003, Paper No. 9, Paragraph No. 17; the First Final Office Action mailed November 6, 2003, Paper No. 11, Paragraph No. 12; the Second Final Office Action (finality withdrawn) mailed September 30, 2004, Paragraph No. 26.

⁴ "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

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the required clarity, deliberateness, and precision.⁵ Third, after receiving express notice of the Examiner's position that lexicography is *not* invoked,⁶ Applicants' responses have not point out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (i.e. Applicants did not argue lexicography *was* invoked). Forth and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation⁷ to be their own lexicographer. Finally, after receiving express notice of the preceding factual findings and conclusions, Applicants' latest response again fails to point out the supposed errors in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b). Moreover, Applicants' latest response—while fully considered by the Examiner—does not change the Examiner's conclusion that Applicants have decided not to be their own lexicographer. Therefore, the heavy presumption in favor of the ordinary and accustomed meaning for claim terminology is confirmed. Accordingly, the claims continue to be interpreted with their "broadest reasonable interpretation," *In re Morris*, 127 F.3d

⁵ "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

⁶ See Note 3.

⁷ See *Fuji Photo Film Co. v. ITC*, 386 F.3d 1095, 72 USPQ2d 1769, 1773 (Fed. Cir. 2004) (noting that applicants' failure to correct the examiner's characterization of an element of claim interpretation is nevertheless an indication of how a claim should be interpreted since applicant declined the examiner's express invitation to correct a possible error in claim interpretation: "applicant's attention was called to the examiner's interpretation of [how the element was interpreted by the examiner, and] applicant was invited to correct the examiner's interpretation—an invitation the applicant did not accept."

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1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997), and the Examiner continues to rely heavily and extensively on this interpretation.⁸

Response to Arguments

15. Applicants' arguments filed March 16, 2005 have been fully considered. While some are persuasive, other are not.

16. Applicants amendments have overcome the §101 rejections.

17. Because Applicants have supplied evidence in the form of a dictionary definition and a U.S. patent (*i.e.* Elliott Jr. et. al., U.S. 5,214,653), the Examiner adopts Applicants' definition as found on page 6 of their Remarks (filed March 16, 2005) as the broadest reasonable interpretation for the term 'fuzzy logic.'

18. Applicants' arguments with respect to claim 6 are not persuasive.

19. Applicants next argue that Streetprices 1/99 is a server and not a client computer. The Examiner respectfully disagrees. Based on the definitions provided by the Examiner in the First Non Final Office Action (mailed July 29, 2003), Page 11, Paragraph No. 18a, it is the Examiner's position that one person's 'server' computer is another person's 'client computer.' Because Applicant's specification does not offer new or unexpected results of the client computer performing the actions instead of the server computer, such a difference is insufficient to distinguish the claims over the prior art.

⁸ See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]"

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20. The Examiner finds that based upon all evidence of record, Streetprices 1/99 need not be a single server. As noted above, there are many reasons for having various client server configurations.
21. The Examiner maintains his position that inherently disclosed elements, like directly disclosed elements, must be shown by the Examiner by a preponderance of the evidence.
22. Applicants arguments regarding 'robots' are not persuasive.
23. Applicants argue that "there is no evidence whatsoever that a product profile is generated in Streetprices 1/99."⁹ The Examiner disagrees. Since the smallest amount of evidence will negate Applicants arguments that "there is no evidence whatsoever," the Examiner relies on the product identifier as 'some evidence.' Applicants' arguments have therefore been considered but are not persuasive. To be clear, Applicants have failed to argue whether the evidence is 'sufficient' (*i.e.* based upon a preponderance of the evidence) that the product profile is generated in Streetprices 1/99. Because Applicants have failed to argue that the evidence is insufficient, the Examiner will therefor not address whether the evidence is sufficient in the "Response to Arguments" section. To be especially clear, Applicants argue "there is no evidence whatsoever" By the Examiner providing at least *some* evidence (and because 'some evidence' is greater than "no evidence whatsoever"), Applicants' arguments are not persuasive.
24. The Examiner is unsure what Applicants intend by the phrase "termination of prosecution." The Examiner has reviewed MPEP §707.02. Applicants are reminded that it is a patent applicant who control the fate of every application. Whether or not an application is 'terminated' is a decision for the patent applicant—not an examiner

⁹ Applicants' Remarks filed March 16, 2005, Page 10, last ¶.

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This is because an examiner has no discretion as to whether or not to issue a patent application. "There is no discretion on the part of the PTO as to whether or not to grant the patent--if the statutory requirements are met, a patent is issued. 35 U.S.C. Section 151. *Markman v. Westview Instruments*, 52 F.3d 967, 34 USPQ2d 1321, 1334, n. 14 (Fed. Cir. 1995) (en banc), *aff'd*, *Markman*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). In other words, if an applicant complies with all statutes and rules, the examiner will issue the case. If an applicant does not comply, the procedures are set forth in the statutes, rules, and MPEP. While it is true examiners retain certain discretionary procedural decisions, substantive decisions of patentability are not discretionary and therefore can not be controlled by an examiner.

25. If Applicants' "termination of prosecution" is intended to mean either abandonment or appeal, Applicants must again make that decision. It is impossible for the Examiner to initiate appeal or an express abandonment.

Conclusion

26. Applicants' amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R.

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§1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

27. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

Unless expressly noted otherwise by the Examiner using appropriate designations on form PTO-892, all references listed on form PTO-892 are cited in their entirety.

28. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

30. Because this application is now final, Applicants are reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided

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by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is “allowed,” exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112 1st paragraph written description and enablement, §112 2nd paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

31. Also in accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the Borland’s Paradox for Windows User’s Guide and Borland’s ReportSmith for Windows User’s Guide, are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The references are cited in their entirety. Paradox for Windows User’s Guide and ReportSmith for Windows User’s Guide, exemplify a typical relational database system and the tables, queries, and reports possible from such a system. Because of the references’ basic content (which is self-evident upon examination of the references) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Paradox for Windows User’s Guide and ReportSmith for Windows User’s Guide are primarily directed towards those of low skill in this art. Because these two references are directed towards those of low skill in this art, the Examiner finds that one of

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ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these two references.

32. Finally and also in accordance with *In re Lee*, , the Examiner finds that Nathan J. Muller's Desktop Encyclopedia of the Internet, ("Desktop Encyclopedia") is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Muller's Desktop Encyclopedia is a practical reference that clearly explains Internet services, applications, protocols, access methods, development tools, administration and management, standards, and regulations. Because of the reference's basic content (which is self-evident upon examination of the reference) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Desktop Encyclopedia is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within the Desktop Encyclopedia.

33. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicants for their "Remarks" (beginning on page 5) traversing the Examiner's positions on various points. If Applicants disagree with any additional factual determination or legal

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conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹⁰ the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next properly filed response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (571) 272-6779. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (571) 272-6788. The fax number for facsimile responses is now (703) 872-9306.



Andrew J. Fischer
Primary Examiner
Art Unit 3627

AJF
May 24, 2005

¹⁰ *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.